IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 512 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI ARJAN SIDIBHAI

Versus

KOLI BAI JASIBEN & ANR.

Appearance:

MS SEJAL K MANDAVIA for Petitioner

MR AJ SHASTRI for Respondent No. 1

MR ST MEHTA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/09/2000

ORAL JUDGEMENT

This Revision Application arises of the judgment and order dated 4th October, 1993, passed by the learned Judicial Magistrate, First Class, Veraval, in Criminal Misc. Application No. 98/90. The petitioner herein is the

opponent in the said application.

The Criminal Misc. Application No. 98/90 was preferred by the opponent no.1 herein under section 125 CRPC. She had claimed maintenance from the present petitioner. It was alleged that the applicant was married to the present petitioner before some 26 years and had resided with the petitioner for 2 years. However, on account of physical and mental torture given by the petitioner, the applicant-wife was compelled to leave her matrimonial house and to reside with her parents. She had also given birth to a son. Earlier she was maintained by her parents. But since she had no other source of income and since the petitioner had neglected to maintain her and her son for some 25 years, she was constrained to move the application for maintenance under section 125 CRPC. The allegations made by the applicant were supported by her evidence. The defence of the husband-petitioner that the applicant had left her matrimonial house of her own will and that the petitioner was ready and willing to reside with her and to maintain her, has not been believed by the learned Magistrate. Considering the income of the petitioner, and that the petitioner was ordered to pay interim maintenance of Rs.250/- PM to the applicant in a petition for restitution of the conjugal rights preferred by the petitioner, the learned Magistrate awarded monthly maintenance of Rs.300/- to the applicant. Feeling aggrieved, the petitioner has preferred the present petition.

Ms. Mandavia has contended that the petitioner was always ready and willing to reside with and to maintain the applicant. He, therefore, should not be compelled to pay maintenance to the applicant. She has also referred to a compromise arrived at in course of hearing of Hindu Marriage Petition No. 43/92. She has submitted that though the parties had agreed to reside together, the applicant did not act upon the said compromise. Be that as it may, the compromise which has not been acted upon, could not have affected the decision of the learned Magistrate. The petitioner has failed to prove that he was ready and willing to reside with and maintain the applicant. No evidence has been produced to prove that any effort was made by the petitioner to call back the applicant and their son to reside with the petitioner. He has not maintained his son either. It, therefore, cannot be believed that the petitioner was always ready and willing to reside with and maintain the applicant. The order of the learned Magistrate of awarding maintenance of Rs. 300/- PM does not warrant

interference.

Revision Application is dismissed. Rule is discharged. Interim relief is vacated. The petitioner will pay the arrears of maintenance on or before 1st January, 2001.

(MS R.M.DOSHIT J)

JOSHI